



GENERAL SESSION

HAZARDOUS WASTE MANAGEMENT COMMISSION

August 5, 2004

7:45 P.M.

1738 EAST ELM STREET

BENNETT SPRINGS CONFERENCE ROOM

JEFFERSON CITY, MO 65101

COMMISSIONERS PRESENT

Ben Kessler, Chairman

PATRICK GLEASON, VICE-CHAIRMAN

NORELLA HUGGINS

Robert Saunders

SUSAN WILLIAMSON

Tim Warren

CALL TO ORDER

CHAIRMAN KESSLER CALLED THE MEETING TO ORDER AT 7:45 P.M.

EXECUTIVE SESSION

**MOTION TO GO INTO CLOSED SESSION WAS MADE BY COMMISSIONER GLEASON AND
SECONDED BY COMMISSIONER SAUNDERS. THE ROLL CALL VOTE WAS AS FOLLOWS:**

Ben Kessler, Chairman	yes
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

MOTION CARRIED AND THE MEETING WAS CLOSED TO THE PUBLIC.

Motion to return to General Session was made by Commissioner Gleason and seconded by Commissioner Warren. The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and the General Session was resumed.

APPROVAL OF MINUTES

Motion to approve the minutes of the June 16, 2004, meeting as presented was made by Commissioner Gleason and seconded by Commissioner Williamson.

Motion was carried and the minutes were approved.

DRYCLEANING ENVIRONMENTAL RESPONSE TRUST (DERT)

HWMC Chairman Ben Kessler removed himself from this Agenda Item due to a personal conflict of interest and handed the gavel to Vice-Chairman Patrick Gleason. Shelley Woods, AGO, advised the Commission to hear each rule individually.

Ken Koon, Brownfields/Voluntary Cleanup Program, presented comments for each individual rule and what actions, if any, were taken to accommodate those comments. The Commission voted on each individual rule, as follows:

10CSR25-17.010 Motion to adopt 10CSR25-17.010 as amended was made by Commissioner Williamson and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.010 was adopted as amended.

10CSR25-17.020 Motion to adopt 10CSR25-17.020 as amended was made by Commissioner Huggins and seconded by Commissioner Williamson.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.020 was adopted as amended.

10CSR25-17.030 Motion to adopt 10CSR25-17.030 was made by Commissioner Warren and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.030 was adopted.

10CSR25-17.040 Motion to adopt 10CSR25-17.040 was made by Commissioner Saunders and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.040 was adopted.

10CSR25-17.050 Motion to adopt 10CSR25-17.050 as amended was made by Commissioner Williamson and seconded by Commissioner Warren.

Commissioner Gleason posed a question on comment number one regarding the Missouri Department of Natural Resources (department), having the authority to determine the “reportable quantity for dry cleaning solvent not listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980.” Vice-Chairman Gleason called for a motion to table the motion to adopt 10CSR25-17.050 as amended.

Motion to table the motion to adopt 10CSR25-17.050 as amended was made by Commissioner Williamson and seconded by Commissioner Warren.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.050 was tabled.

10CSR 25-17.060 Motion to adopt 10CSR25-17.060 was made by Commissioner Huggins and seconded by Commissioner Saunders.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.060 was adopted.

10CSR25-17.070 Motion to adopt 10CSR25-17.070 as amended was made by Commissioner Saunders and seconded by Commissioner Warren.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.070 was adopted as amended.

10CSR 25-17.080 Motion to adopt 10CSR25-17.080 was made by Commissioner Warren and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.080 was adopted.

10CSR 25-17.090 Motion to adopt 10CSR25-17.090 was made by Commissioner Huggins and seconded by Commissioner Williamson.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.090 was adopted.

10CSR 25-17.100 Motion to adopt 10CSR25-17.100 was made by Commissioner Williams and seconded by Commissioner Saunders.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.100 was adopted.

10CSR 25-17.110 Motion to adopt 10CSR25-17.110 was made by Commissioner Huggins and seconded by Commissioner Williamson.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.110 was adopted.

10CSR 25-17.120 Motion to adopt 10CSR25-17.120 was made by Commissioner Williamson and seconded by Commissioner Warren.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.120 was adopted.

10CSR25-17.130 Motion to adopt 10CSR25-17.130 was made by Commissioner Saunders and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES

NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.130 was adopted.

10CSR25-17.140 Motion to adopt 10CSR25-17.140 as amended was made by Commissioner Warren and seconded by Commissioner Huggins.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.140 was adopted as amended.

10CSR25-17.150 Motion to adopt 10CSR25-17.150 was made by Commissioner Huggins and seconded by Commissioner Warren.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.150 was adopted.

10CSR25-17.160 Motion to adopt 10CSR25-17.160 was made by Commissioner Williamson and seconded by Commissioner Warren.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.160 was adopted.

10CSR25-17.170 Motion to adopt 10CSR25-17.170 was made by Commissioner Warren and seconded by Commissioner Williamson.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.170 was adopted.

10CSR25-17.050 Vice-Chairman Gleason called for a motion to remove the motion to table 10CSR25-17.050.

Motion to remove the motion to table 10CSR25-17.050 was made by Commissioner Huggins and seconded by Commissioner Williamson.

Vice-Chairman Gleason declared 10CSR25-17.050 as being removed from the table.

Vice-Chairman Gleason opened discussion of comment number one, referring back to his original question as to whether or not the department has the authority to determine the “reportable quantity for dry cleaning solvent not listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980”.

Shelley Woods, AGO, informed the Commission that there are two ways under administrative law that the administrative agency has authority: If the statute says they have the authority or if the statute implies they have the authority if that authority is needed to do their job. Ms. Woods pointed out statute 260.925RSMo, which addresses the Commission establishing rules that will fund cleanups on properties where a release has occurred. She stated that the only way to know whether or not a release has occurred is if someone reports it and the question is when that report has to occur. Ms. Woods suggested that the staff/workgroup worded the rule this way so as to manage the fund and that the only way to prioritize these sites is to have people reporting them, making this argument enough to justify the authority of the department to report them.

Commissioner Saunders asked what the consequences would be if the departmental authority wasn’t in the rule. Ken Koon, Brownfields/Voluntary Cleanup Program, said that most of the solvents do have a federal reporting quantity and that departmental reporting quantity was thinking towards the future usage of new solvents not being used at the present time.

The motion to adopt 10CSR25-17.050 as amended that was made by Commissioner Williamson and seconded by Commissioner Warren was voted on.

The result of the vote is as follows:

BEN KESSLER, CHAIRMAN	YES
PATRICK GLEASON, VICE-CHAIRMAN	YES
NORELLA HUGGINS	YES
Robert Saunders	yes
SUSAN WILLIAMSON	YES
TIM WARREN	YES

Motion was carried and 10CSR25-17.050 was adopted as amended.

HWMC Vice-Chairman Patrick Gleason handed the gavel back to HWMC Chairman Ben Kessler who presided over the remainder of the meeting.

Ed Galbraith, Director, HWP, informed the Commissioners of packets consisting of statutes and regulations collected on the DERT, that he had placed on the table for them. The packets were provided by Gary Marble and offered to the Commissioners at Mr. Marble's request.

A ten-minute break was taken at this time.

INTRODUCTIONS

Ed Galbraith, Director, HWP, introduced to the Commission, Andrea Kliethermes as the new Budget and Planning Section Chief. Mr. Galbraith also informed the Commission that Kathy Flippin had accepted the position as Enforcement Section Chief.

COMMISSION CORE WORKGROUP POLICY

Ed Galbraith, Director, HWP, presented the draft version of the HWMC Operating Policies. Mr. Galbraith asked for the Commission's consideration of possible adoption of the draft version of the policy.

Motion to adopt the draft version of the Hazardous Waste Management Commission Operating Policies was made by Commissioner Huggins and seconded by Commissioner Saunders.

Motion to amend Section 3 (Officers) page 6 was made by Commissioner Huggins and seconded by Commissioner Saunders to include the following sentence, "**Based upon seniority the officers shall be rotated annually among the members who wish to serve.**"

The Commission discussed the rotation of Officers, sharing differences of opinion regarding the seniority issue, and the time frame of rotation. Some of the Commissioners expressed an interest in rotating Officers every two years.

Commissioner Huggins withdrew her original motion.

Motion to amend Section 3 (Officers) page 6 to include the following wording, "**The members shall annually select amongst themselves a chairman and a vice-chairman during the second calendar meeting of each calendar year. As a suggestion, it is recommended that the chairmanship/vice-chairmanship be rotated amongst willing candidates at least every two years,**" was made by Commissioner Gleason and seconded by Commissioner Warren

Motion carried. Section 3 (Officers) page 6 was amended.

Commissioner Huggins explained the differences between the first and second draft of the Operating Policies that had been distributed to the Commission, pointing out technical corrections made to the draft.

The Commission discussed the usage of the word "expeditiously" in reference to page 13, Section 2, first bullet, "The commission shall hold a meeting as expeditiously as possible to

decide the appeal.” There was some discussion about the advantages and disadvantages of setting hard deadlines such as 30 days. No change was made.

Motion to amend page 8, Section 6, 9th bullet to say, **“If a meeting is to contain a closed session in accordance with the Sunshine Law, a statement of when the closed session when the closed session will be held and when the open session will be held, whenever possible”** and page 14, Section 1, to **remove the hyphen from the word ex parte** was made by Commissioner Gleason and seconded by Commissioner Warren.

Motion carried. Page 8, Section 6, ninth bullet and page 14, Section 1 were amended.

Motion to amend page 7, Section 6, third bullet **removing the words “if any”** was made by Commissioner Saunders and seconded by Commissioner Williamson.

Motion carried. Page 7, Section 6, 3rd bullet was amended.

The Commission discussed public comment procedures according to the law. Kevin Perry, REG FORM, disagreed with the limited public comment period, saying comments should be considered outside that period. Shelley Woods, AGO, explained that the law says a change to a proposed order of rulemaking cannot be made unless it is based on comments made during the actual comment period. Commissioner Gleason pointed out that a justified extension of the comment period could be requested. Shelley Woods, AGO, said that comments could be made during the actual drafting of the rule using the correct procedures. Ms. Woods explained that there are statutory periods that start as soon as you publish the rule in draft form in the State Register, with certain requirements that must be met during that timeframe. Commissioner Saunders expressed a concern of fairness to the constituents regarding how to handle new information introduced after the comment period. Norm Plassmeyer, Associated Industries of Missouri, addressed the Commission pointing out that if new material is introduced after the close of the comment period, and the Commission considered that material, the public would not have the opportunity to comment on that new material. Chairman Kessler expressed a concern for when to exactly “cut-off” comments to which Mr. Plassmeyer suggested that such a decision be at the discretion of the Chairman, with the cooperation of the Commission. In response, Kevin Perry, REG FORM, asked the Commission not to develop a policy that is more stringent than it needs to be.

Commissioner Huggins withdrew her motion to adopt the draft version of the HWMC Operating Policies.

Motion to adopt the Policy Manual as amended during this meeting was made by Commissioner Huggins and seconded by Commissioner Saunders.

Motion carried and the Policy Manual was adopted as amended during this meeting.

DELEGATION OF REFERRAL OF FEE AND TAX COLLECTION CASES TO THE AGO

Keith Bertels, Enforcement Section presented information regarding the delegation of referral of fee and tax collection cases to the AGO. Mr. Bertels also expressed a need to do direct AGO referrals for delinquent payments regarding DERT Fund cases. Ed Galbraith, Director, HWP, explained that these are cases dealing with the collection of fees and taxes and that no

environmental issues are involved. The Commission expressed and approval of such AGO direct referrals of such cases to the AGO.

TANKS RISK-BASED CORRECTIVE ACTION OVERVIEW

Fred Hutson, Tanks Section, presented a Tanks Risk-Based Corrective Action Overview to the Commission, explaining its history, purpose, and the procedures and techniques used. Mr. Hutson answered questions the Commission had regarding the Tanks Risk-Based Corrective Action

SUMMARY OF THE TRULY AGREED VERSION OF BILL SS#2 HCS HB 980

Ed Galbraith, Director, HWP, summarized the Truly Agreed Version of Bill SS#2 HCS HB 980, highlighting that the department may not include any permit requirement not codified by regulation or statute. He explained that a review process of permits and certifications has already begun to ensure compliance with the statute. Mr. Galbraith told the Commission that most of the statute is about the Regulatory Impact Report. Commissioner Huggins informed the Commission that the Commissions' Core Workgroup will have one more meeting at which time they will approve the Revised Regulatory Impact Report and the Procedural Rules for Commission Hearings.

COMMISSION ISSUE UPDATES/MONTHLY REPORTS

Ed Galbraith, Director, HWP, pointed out that the June report is a year in review report of the HWP, giving the summary of the preceding year's workload.

PUBLIC INQUIRIES OR ISSUES

There were no public inquiries or issues signed up for at this time.

OTHER BUSINESS

Ed Galbraith, Director, HWP, presented the Commission with a handout regarding information on dates for the Interim Committee Meetings and a packet of information that had been given to the Interim Committee to review.

FUTURE MEETINGS

The Commission decided to move the October 5, 2004, Jefferson City meeting to September 30, 2004, Kansas City, Missouri to accommodate attendance to the Greater Kansas City Chamber of Commerce Environmental Reception held on September 29, 2004, and to offer public accessibility in the Kansas City area to the Commission meeting.

ADJOURNMENT

Motion to adjourn the meeting was made by Commissioner Gleason and seconded by Commissioner Williamson.

Motion was carried and the meeting was adjourned.

Respectfully Submitted,

ROBBIN STOUT
Commission Secretary

APPROVED

BEN KESSLER, CHAIRMAN

DATE: _____